Supreme Court, U.S.
FILED
No. 05-1406 FEB 27 2006
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

SHEILA DAVIS,

Petitioner,

v.

POLK COUNTY SHERIFF'S OFFICE,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Sheila Davis
Pro Se
929 Gilmore Ave. Apt. 80
Lakeland, FL 33801
(863) 738-2367

QUESTION PRESENTED

Whether Petitioner can satisfy the prerequisite of a timely filed charge.

LIST OF PARTIES

The Petitioner is Sheila Davis, a resident of Polk County, Florida. The Respondent is the Polk County Sheriff's office for Polk County.

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The district court opinion, Davis v. Polk County Sheriff is unpublished and is reprinted at App. 5. The Eleventh Circuit opinion, Davis v. Polk County Sheriff is unpublished and is reprinted at App. 1.

JURISDICTION

The United States Court Of Appeals decision denying the petitioner's petition for rehearing was entered on December 2, 2005. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). The United States District Court Middle District Of Florida had jurisdiction pursuant to 42 U.S.C. § 2000 e-5.

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitution of the State of Florida, Article 1 § 2. Basic rights states: "All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion, national origin, or physical disability."

STATEMENT OF THE CASE

Petitioner brings this cause of action against the Polk County Sheriff's Office. Polk County Sheriff's Office upholds a clever sham, creatively an insubordination scheme to use as a cover-up for terminating petitioner's employment. Due to the fact that petitioner reported incident of witnessing correctional officer Teddy Sanders brutalizing inmate James Gilliard on January 3, 1998, there was also racial prejudice and dominance involved against her. Nevertheless, also apart of Polk County Sheriff's Office's sham is they used a black man, Col. Willie Hall, who was promoted from major to be Polk County Sheriff's Office sole based representative to interact with Polk County Sheriff's Office attorney Michael D. Malfitano to obscure the fact that the Petitioner was being demeanored by all white people who generated memos reports.

Petitioner claims that due to many lengthy issues, and unaware at the time of being pro se, she was unable to prove protected status of race at the time of an administrative hearing with Administrative Law Judge Fred Buckine on February 20, 2002. Therefore, the request for Relief and Complaint of Discrimination was dismissed with prejudice on March 17, 2003, by Florida Commission on Human Relations. Petitioner also claims that on the Final Order Dismissing Petition From An Unlawful Employment Practice, she was given within 30 days of the date ordered (March 17, 2003) to appeal case to the Clerk Of Commission, or request the Equal Employment Opportunity Commission review the Commissions final agency action, by requesting it in writing within 15 days of her receipt of the order. Petitioner chose to request in writing a substantial weight review by EEOC.

Respondent forwarded a letter, dated April 1, 2003, to EOC to have petitioner's request declined. However, pursuant to Title VII of the Civil Rights Act of 1964, EEOC issued a Notice of Suit Rights to petitioner, dated November 25, 2003. Petitioner filed suit within 90 days of the notice to the U.S. Middle District Court in Tampa, FL. Petitioner contends she amended her complaint to racial discrimination and Judge Elizabeth Kovachevich dismissed case with prejudice, after stating in her order dated August 6, 2004, that the court finds Plaintiff's charge was not timely. Petitioner filed a Notice Of Appeal to The United States Court Of Appeals in Atlanta, GA, pursuant to 28 U.S.C. § 1292, who granted petitioner's motion to reinstate appeal, dated July 19, 2005. *Ferdik v. Bonzelet* C.A., 1992 963 F.2d 1258. Respondent submitted untimely brief to U.S. Court Of Appeals and contends that petitioner's charge was untimely. Nevertheless, the U.S. Court Of Appeals decision, dated October 31, 2005, states that petitioner cannot satisfy the prerequisite of a timely filed charge.

Petitioner filed a Petition For Rehearing, mailed November 9, 2005 along with the opinion of the 11th circuit, also with enclosures (11) which includes copies of evidence of EEOC's Notice of Suit Rights, Findings from the state or local agency who investigated the case, Respondent's letter to EEOC requesting to have petitioner's request for substantial weight review declined, docket sheet from U.S. Middle District Court in Tampa, FL, draft of step-by-step guide from district court in Tampa, FL to demonstrate to courts and parties that petitioner admits to typo of amended complaint, concerning whom she filed charges with and date(s).

Petitioner received an order from U.S. Court Of Appeals dated December 2, 2005, denying her Petition For Rehearing.

REASONS WHY THE WRIT SHOULD BE GRANTED

Pursuant to Supreme Court Rule 10(c), "The United States Court Of Appeals has decided an important question of federal law that hasn't been but needs to be settled by this court," petitioner states the Court should grant the petition for writ of certiorari. The United States Court Of Appeal may be erroneous by deciding that petitioner cannot satisfy the prerequisite of a timely filed charge. Petitioner provided her Petition For Rehearing, along with evidence of the findings of the local agency who investigated the case, to the United States Court Of Appeals. Satisfactory proof was also provided showing that the case and decided to provide petitioner with a Notice of Suit Rights. EEOC's Notice of Suit Rights does not state that petitioner was untimely. The national importance of having the United States Supreme Court decide the question involved is the fact that the Court will clarify to the general public, as well as to the lower courts as well that a modification needs to be made showing that petitioner's claim is not untimely. Nevertheless, the case is of great importance to petitioner for she deserves relief, pursuant to Title VII of the Civil Rights Act of 1964. Also, the case is important to others with a similar situation so we as a people can have a fair chance at civil rights and be courageous in pursuing justice to the highest court(s) for relief.

CONCLUSION

Although petitioner may experience the harm from an unlawful employment practice, she was not always aware of the strategy involved in pursuing litigation. Considering the fact that petitioner has acted upon case in a timely manner

since year 1998, pursuant to federal and state laws, she should be granted an allowance beyond that of legal counsel. For these reasons, the Petitioner respectfully requests the Court to grant certiorari.

Sheila Davis, Pro Se
929 Gilmore Ave. Apt. 80
Lakeland, FL 33801
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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 05-10581
Non-Argument Calendar

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
October 31, 2005
THOMAS K. KAHN
CLERK

D.C. Docket No. 04-00177-CV-T-17-TBM

SHEILA OLIVIA DAVIS,

Plaintiff-Appellant,

versus

POLK COUNTY SHERIFF'S OFFICE,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(October 31, 2005)

Before DUBINA, BLACK and HULL, Circuit Judges.

PER CURIAM:

Sheila Olivia Davis, proceeding *pro se*, appeals the district court's dismissal of her amended complaint alleging discrimination and retaliation based on her race pursuant to Title VII, 42 U.S.C. §§ 2000e-2(a), 2000e-3(a). The district court dismissed Davis's amended complaint *sua sponte* after determining Davis's claim was untimely because her EEOC charge was not filed within 300 days of the last discriminatory act, and was therefore frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).[1] Davis asserts the district court abused its discretion when it dismissed her claim because her case was not untimely. She also seeks recusal of the district judge upon remand. We affirm the district court.

We review the dismissal "of an *in forma pauperis* action as frivolous under § 1915(e)(2)(B)(i) for abuse of discretion." *Mitchell v. Brown & Williamson Tobacco Corp.*, 294F.3d 1309, 315 (11thCir. 2002). An action "is frivolous if it is without arguable merit either in law or fact." *Bilal v. Driver*, 251 F.3d 1346, 1349 (11th Cir. 2001).

As an initial matter, the Polk County Sheriff's Office (Sheriff's Office) Contends Davis's appeal is untimely. A notice of appeal in a civil case must be filed "within 30 days after the judgment or order appealed from is entered." Fed. R. App. P. 4(a)(1)(A). If a separate document is required by Federal Rule Of Civil

Procedure 58(a)(1), then the order is not entered until either the "judgment or order is set forth on a separate document" or 150 days have passed since the judgment or order was entered in the civil docket. Fed. R. App. P. 4(a)(7)(A)(ii).

The district court's order of dismissal with prejudice Pursuant to 28 U.S.C.§ 1915(e)(2)(B) required a separate

document. Since the order was entered on the docket on August 6, 2004, but not set forth on a separate document, it was not entered for the purposes of filing

[1]Davis also filed a motion to proceed in *forma pauperis* in the district court.

a notice of appeal until January 3, 2005. Davis's notice of appeal, filed either on January 27 or January 28, 2005, is therefore timely to appeal the district court's order of dismissal.

Davis's notice of appeal does not designate any order being appealed as required by Fed. R. App. P. 3(c)(1)(B). Because the requirements of Rule 3 are jurisdictional, *Smith v. Barry,* 112 S. Ct. 678, 682 (1992), we are obligated to review *sua sponte* whether Davis complied with Fed. R. App. P. 3(c)(1)(B). *See Finn v. Prudential-Bache Sec., Inc.,* 821 F. 2d 581, 584-85 (11th Cir. 1987). A notice of appeal must "designate the judgment, order, or part thereof being appealed." Fed. R. App. P. 3(c)(1)(B). Failure to abide by this requirement generally precludes us from reviewing any judgment or order not so specified. *McDougald v. Jenson,* 786 F.2d 1465, 1474 (11th Cir. 1986). However, we liberally construe this requirement "in favor of the appellant where the intent to appeal an unmentioned or mislabeled ruling is apparent
and there is no prejudice to the adverse party." *Campbell v. Wainwright,* 726 F.2d 702, 704 (11th Cir. 1984).

Davis's notice of appeal reads, "Plaintiff is filing a NOTICE OF APPEAL to the UNITED STATES COURT OF APPEALS, ELEVENTH CIRCUIT, ATLANTA GEORGIA." Davis's brief challenges the district court's finding that her charge was untimely. The Sheriff's Office's

brief addresses the district court's order of dismissal, contesting the appeal's timeliness as well as briefing the merits of the issue. Davis evidenced an intent to appeal the dismissal of her amended complaint and the Sheriff's Office has not been prejudiced. Therefore, we have jurisdiction over Davis's appeal of the order dismissing her amended complaint.

A prerequisite to bringing suit under Title VII is the timely filing of a charge of discrimination. *Maynard v. Pneumatic Prods. Corp.*, 256 F.3d 1259, 1262 (11th Cir. 2001). 42 U.S.C. § 2005e-5(e)(1) sets out the amount of time a claimant has to file a charge with the EEOC.

A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred . . .except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier. . . .2005e-5(e)(1). Since Florida is a deferral state,[2] a charge must be filed within 300 days of the last discriminatory act. *E.E.O.C. v. Joe's Stone Crabs, Inc.*, 296 F.3d 1265, 11271 (11th Cir. 2002).

Davis alleged the most recent acts of discrimination occurred on or about May 1998, but she did not file charges with the EEOC until May or June 2003. Assuming Davis

filed timely charges with the administrative agency, making the longer 300 day period applicable to her case, Davis cannot satisfy the prerequisite of a timely filed charge. Since the district court did not err in concluding that Davis's EEOC charge was untimely, it did not abuse its discretion in dismissing her amended complaint. Because we affirm the district court, we do not reach the issue of whether the district court judge should be recused.

AFFIRMED.

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[2]Deferral states "prohibit the unlawful employment practice at issue and have established state or local authorities to grant or seek relief for such practice." *Maynard,* 256 F.3d at 1262-63.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SHEILA OLIVIA DAVIS,
Plaintiff(s),

v. CASE NO. 8:04-CV-177-T-17TBM

POLK COUNTY SHERIFF'S OFFICE,

Defendant (s) .

_____/

ORDER

This cause is before the Court on:
Dkt. 9 Amended Complaint

In the prior Order (Dkt. 4) dismissing this case without prejudice, the Court directed Plaintiff to file an amended complaint, and directed Plaintiff to state what the findings of the local agency investigating the charge were. The EEOC Notice of Right to Sue states the its case was closed based on those findings. There is a pending motion to proceed IFP, and the Court is required to evaluate whether this case has any possibility of success in deciding that motion. The Court must ascertain that the case is not filed for a frivolous or malicious purpose.

In Plaintiff's Amended Complaint, the only time frame stated for the occurrence of discriminatory acts is January – May, 1998. Plaintiff filed her EEOC charge in May or June, The Court previously directed Plaintiff to notify the Court of

the findings of the local agency which investigated Plaintiff's claim, but Plaintiff has not done so.

Case No. 8:04-CV-177-T-17TBM

Timely filing of a charge of discrimination is a Prerequisite to bringing suit under Title VII. Florida is a "deferral" state, in that Florida has a state agency, the Florida Commission on Human Relations, to investigate claims. The "look-back" period for filing a timely charge with the EEOC is 300 days, if the complainant first files a timely charge in a state or local agency.

Since the only discriminatory acts stated in the Complaint took place in 1998, and EEOC charge was not filed until May or June, 2003, the Court finds Plaintiff's charge was not timely, and therefore this case has no possibility of success.

Accordingly, it is

ORDERED that the Amended Complaint is **dismissed with Prejudice**, and the Clerk of Court shall close this case.

DONE and ORDERED in Chambers, in Tampa, Florida on this 6th day of August, 2004.

s/ Elizabeth A. Kovachevich
Elizabeth A. Kovachevich
UNITED STATES DISTRICT JUDGE

Copies to: All parties and counsel of record

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

No. 05-10581-FF DEC 0 2 2005

SHEILA OLIVIA DAVIS,

Plaintiff-Appellant,

Versus

POLK COUNTY SHERIFF'S OFFICE,

Defendant-Appellee.

On Appeal from the United States District Court for the Middle District of Florida

---

BEFORE: DUBINA, BLACK AND HULL, Circuit Judges.

PER CURIAM:

The petition (s) for rehearing filed by Appellant Sheila Olivia Davis is DENIED.

ENTERED FOR THE COURT:

s/ Susan H Black
UNITED STATES CIRCUIT JUDGE ORD-41

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

SHEILA DAVIS — EEOC Case No. 15D995983

Petitioner, — FCHR Case No. 99-0192

v. — DOAH Case No. 01-3466

POLK COUNTY SHERIFF'S OFFICE

Respondent. — FCHR Order No. 03-017

_____/

FINAL ORDER DISMISSING PETITION FOR RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE

On October 7, 1998, Petitioner filed a complaint of discrimination pursuant to Florida Civil Rights Act of 1992, Sections 760.01-760.11, Florida Statutes (2001), alleging that the Respondent committed an unlawful employment practice based on her marital status. The allegations set forth in the complaint were investigated and on July 20, 2001, the Executive Director issued his determination that there was no reasonable cause to believe that a discriminatory act occurred. The Petitioner filed a Petition for Relief and was granted a formal evidentiary hearing that was held in Lakeland, Florida, on February 20 and 21, 2002, before Administrative Law Judge Fred L. Buckine.

Judge Buckine issued a Recommended Order of Dismissal dated September 16, 2002.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order.

Findings of Fact

Judge Buckine found that Petitioner was employed by the Polk County Sheriff's Office primarily as a Booking Clerk from 1994 until her termination on May 29, 1998. The Petitioner was married to Curtis C. Young in 1997, in Pasco County, and subsequently divorced him at some point in time prior to April, 1998. In December, 1997, the Sheriff initiated an administrative investigation into allegations that Petitioner was passing confidential information about inmates to her then husband, Young. This investigation continued through April, 1998.

On January 3, 1998, while on duty the Petitioner observed and reported an incident of an officer allegedly beating a handcuffed inmate. Later, her supervisor was made aware of the report and made jokes about her use of the slang term "Jacked Up" in her report. The following morning, January 4, Petitioner was working at the Booking Area information desk. During her tour of duty, she got
into an argument with a civilian. After a discussion between Petitioner and her supervisor, she was relieved of duty in the Booking Area and reassigned to duty in the Control Tower. As the exchange between the two became "tense," she was also reported as being "insubordinate," relieved of duty and sent home for the remainder of the night shift. The

above incident was reported to the Lieutenant (Officer in Charge) who instructed her supervisor to suspend her for the

remainder of the January 4th tour of duty. Upon informing the Petitioner of her suspension, another argument ensued between her and her supervisor. On January 5, 1998. Based on the report by her supervisor and with the concurrence of the Lieutenant, the Petitioner was charged with violating Sheriff's General Orders relating to Respect toward Supervisors; Abusiveness; and Compliance and Execution of Lawful Orders.

Petitioner also, at some time prior to January, 1998, began to participate in the Polk County Crime Stoppers, a program for civilians to report known and suspected criminals and criminal activities. The program often provided monetary rewards. Petitioner became aware that her ex-husband, Young, may have been incarcerated in the Pinellas County Jail under an alias. Sometime during April, 1998, Petitioner contacted the Pinellas County Sheriff's Office that she may have some information about one of their inmates (as part of Crime Stoppers).

Upon becoming aware that she was an employee of the Polk County Sheriff's Office, the Pinellas Lieutenant advised Petitioner to work through her office and not directly contact Pinellas Sheriff's Office in the future. He also informed the Polk Sheriff's Office and Lt. Blackwelder, of the Polk Administrative Investigations Department, initiated a joint effort. Lt. Blackwelder instructed the Petitioner to cease calling the Pinellas County Sheriff's Office regarding Young. At this meeting an argument ensued. Subsequent to this meeting, Petitioner contacted the Pinellas County Sheriff's Office regarding Young for the intended Purpose of collecting a Crime Stoppers award. She was then alleged to have violated Sheriff's General Orders relating to Compliance and Execution of Lawful Orders and Respect

towards Supervisors. She was suspended with pay for these violations on or about April 22, 1998.

In May, 1998, a pre-disciplinary hearing was held and all charges were sustained resulting in the termination of her employment. The ALJ found that her termination came about because of her repeatedly argumentative and insubordinate behavior towards her supervisors and superiors. See, ¶ 26 and 28, Recommended Order. A review of the transcript and exhibits clearly indicate competent and substantial evidence supporting these findings.

We adopt the Administrative Law Judge's findings of Fact.

Conclusions of Law

With regard to the steps necessary for establishing that an unlawful employment practice has occurred, it has been stated, "The initial burden is upon Petitioner to establish a prima facie case of discrimination. Once Petitioner established a prima facie case, a presumption of unlawful discrimination is created. The burden then shifts to Respondent to show a legitimate, nondiscriminatory reason for its action. If Respondent carries this burden, Petitioner then must prove by a preponderance of the evidence that the reason offered by the Respondent is not its true reason, but only a pretext for discrimination."
See conclusions of law adopted by a Commission panel in Spratlin vs. Washington Mutual Bank d/b/a Great Western. 23 F.A.L.R 3359, AT 3364, 3365 (FCHR 2001), citations from the quoted statement omitted

The Administrative Law Judge concluded that the Petitioner failed to establish, by a preponderance of the evidence, a prima facie case of discrimination by the Respondent. See, ¶ 29, Recommended Order. He Specifically found that there was no casual connection

between her membership in a protected group and the adverse employment action (termination) that was

FCHR Order No. 03-017
Page No. 4

Inferences drawn by the Administrative Law Judge in his findings and conclusions. She also introduces evidence or inferences that were never presented in the evidentiary hearing.
Specifically, the Petitioner states:

Exception #1 (first two paragraphs of letter) consists of complaints about the failure of the Commission's clerk to transmit "all of my [Petitioner's] original complaint," and the fact that Petitioner also requested case to be based on Whistleblower's Protection. The DOAH hearing is "de novo" based upon the Petitioner's Petition for Relief. All matters must be pled and supported before the ALJ.

Also, there is nothing in the file that reflects the Petitioner's alleged request to base her case on Whistleblower's Protection and, even if there was, the Commission has no authority over local government whistleblowers, that authority is vested in the Circuit Courts of the state. The Commission rejects Petitioner's exception #1.

Exceptions #2 and 15-19, inclusive, relate to alleged activities by the Respondent and its officers, as well as suggested further actions that Petitioner believes the Commission should take, and is beyond the scope of this proceeding and unsupported by any evidence in the record. The commission rejects Petitioner's exceptions #2 and 15-19.

Exceptions #3-5 and 8-11, inclusive, restate and reargue facts before the ALJ and do not show that the ALJ''s findings

and conclusions were not supported by the evidence in the case. The commission rejects Petitioner's exceptions #3-5 and 8-11.

Exceptions #6-7 and 14 raise issues and present arguments that were not presented at the evidentiary hearing and are beyond the record in the case. The Commission rejects Petitioner's exceptions #6-7 and 14.

Exceptions #12 and 13 raise an issue of Petitioner's state of mind, and a possible disability, that was not included in her initial complaint or Petition for Relief, and was not investigated by either the Commission or the ALJ. These exceptions are beyond the scope of the issue presented. The Commission rejects Petitioner's exceptions #12 and 13.

Based on the foregoing, the Petitioner's exceptions are not accepted.

Dismissal

The Request for Relief and Complaint of Discrimination are DISMISSED with prejudice.

The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure, Rule 9.110.

DONE AND ORDERED THIS 17TH day of March, 2003.

FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS

s/ Rita Barreto Craig

Commissioner Rita Barreto Craig Chairperson and
Commissioners Gayle Cannon and P.C. Wu

FCHR Order No. 03-017
Page No. 5

Filed this 17th day of s/ March, 2003
In Tallahassee, Florida.

s/ Violet Crawford
Violet Crawford, Clerk

Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301
(850) 488-7082

NOTICE TO COMPLAINANT/PETITIONER

As your complaint was filed under Title VII of the Civil Rights Act of 1964, which is enforced by the U.S. Equal Employment Opportunity Commission (EEOC), you have the right to request the EEOC review this Commission's final agency action. To secure a "substantial weight review" by EEOC, you must request it in writing within 15 days of your receipt of this Order. Send your request to Miami District Office (EEOC), One Biscayne Tower, 2 South Biscayne Blvd., Suite 2700, 27th Floor, Miami, FL 33131

Copies furnished to:
Sheila Davis
2458 Chestnut Woods Drive
Lakeland, FL 33815

Michael D. Malfitano, Esquire
David P. Steffen, Esquire
100 West Kennedy Blvd., Suite 500
PO Box 1840
Tampa, Florida 33601-1840

David S. Bergdoll, Esquire
433 North Broadway
Bartow, FL 33830

Fred L. Buckine, Administrative Law Judge (DOAH)
Jim Tait, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addresses this 17th day of s/ March, 2003.

BY: s/ Violet Crawford
Clerk of Commission

CONSTANGY, BROOKS & SMITH, LLC
ATTORNEYS AT LAW
SUITE 500
100 WEST KENNEDY BOULEVARD
P.O. BOX 1840
TAMPA, FLORIDA 33601-1840
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April 1, 2003

Federico Costales
Miami District Office of the EEOC
One Biscayne Tower
2 South Biscayne Blvd., Suite 2700
Miami, FL 33131

Re.: *Sheila Davis and Polk County Sheriff's Office,*
FCHR Case No.: 99-0192
EEOC Case No.: 15D995983

Dear Mr. Costales:

This letter is in response to the request forwarded by Petitioner, Ms. Sheila Davis, regarding her Charge filed with the Florida Commission on Human Relations. On March 30, 2003, Ms. Davis requested that your office conduct a "substantial weight review" of the Florida Commission's Final Agency Action. Based upon a conversation I had with your office, it is our understanding that you do not have any record of her dual filing her charge.

Even if the EEOC received a charge regarding this matter, we believe the request should be dined.

On October 7, 1998, Petitioner filed a Complaint alleging marital status discrimination and pursuant to the Florida Civil Rights Act of 1992, § 760.01-760.11, Fla. Stat. (2001). In addition, Petitioner also alleged retaliation based upon her reporting the alleged abuse of an inmate. After an investigation, the Executive Director issued a decision dismissing her Complaint. The Petitioner filed a Petition For Relief and an evidentiary hearing was held before Administrative Law Judge Fred L. Buckine on February 20, 2002. Judge Buckine issued a Recommended Order of Dismissal on September 16, 2002, which was affirmed by the Florida Commission on March 17, 2003. Therefore, the EEOC does not have jurisdiction to review this matter pursuant to its substantial weight procedures. Petitioner's appellate rights are under Florida Statutes and not the EEOC's review procedures. Consequently, we request that the EEOC decline Petitioner's request.

Sincerely

CONSTANGY, BROOKS & SMITH, LLC

s/ David Steffen
DAVID P. STEFFEN

DPS/dm

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Sheila Davis**
2458 Chestnut Woods Drive
Lakeland, Florida 33815

From: **Miami District Office**
One Biscayne Tower
2 South Biscayne Blvd., Ste. 2700
Miami, Florida 33131

On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR § 1601 7(A))

EEOC Charge No.	**EEOC Representative**	**Telephone No.**
15D-1999-05983	**James Colon, State & Local**	**(305)536-4454**

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

The facts alleged in the charge fail to state a claim under any of the statutes enforced by EEOC.

Your allegations did not involve a disability as defined by the Americans with Disabilities Act.

The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.

Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.

While reasonable efforts were made to locate you, we were not able to do so.

You were given 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.

The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

X The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

Other (briefly state)

-NOTICE OF SUIT RIGHTS-
(See the additional information attached to this form.)

Title VII, the Amerians with Disabilities Act, and/or the Age Discrimination in Employment At: This will be the

only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this Notice;** or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA **suits must be filed in federal** or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

NOV 25 2003

Enclosure(s) s/ Hollis Larkins
Federico Costales,
District Director

(Date Mailed)

cc: **Polk County Sheriff's Office**
c/o Michael D. Malfitano, Esp.
100 W. Kennedy Boulevard,
Ste. 500
Post Office Box 1840
Tampa, Florida 33601-1840

David S. Bergdoll, Esq.
455 North Broadway
Bartow, Florida 33830

INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY EEOC

(This information relates to filing suit in Federal or State court under Federal law. If you also plan to sue claiming violations of State law, please be aware that time limits and other provisions of State law may be shorter or more limited than those described below.)

PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act(ADA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice.**
Therefore, you should **keep a record of this date.** Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a

timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough.

You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment record are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS – Equal Pay Act (EPA):

EPA Suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible.
For example, if you were underpaid under the EPA for work performed from 7/1/00 to 12/1/00, you should file suit before 7/1/02 – not 12/1/02 – in order to recover unpaid wages due for July 2000. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2-or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION – Title VII and The ADA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE – All Statutes:

You may contact the EEOC representative shown on your notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice.** (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

Electronic Case Filing U.S. District Court-Middle District of Florida-Docket Report

APPEAL, TBM

U.S. District Court
Middle District of Florida (Tampa)
CIVIL DOCKET FOR CASE #: 8:04-cv-00177-EAK-TBM

Davis v. Polk County Sheriff
Assigned to: Judge Elizabeth A. Kovachevich
Referred to: Magistrate Judge Thomas B. McCoun, III
Demand: $0
Cause: 42: 2000 Job Discrimination (Sex)

Date Filed: 01/30/2004
Jury Demand: Plaintiff
Nature of Suit: 442 Civil Rights: Jobs

Jurisdiction: Federal Question

Plaintiff

Sheila Olivia Davis represented by: **Sheila Olivia Davis**
929 Gilmore Ave., Apt.80
Lakeland, FL 33801
PRO SE

V.

Defendant

Polk County Sheriff's Office

Date Filed	#	Docket Text
01/30/2004	1	COMPLAINT filed; jury demand (jlh) (entered: 01/30/2004)
01/30/2004		MAGISTRATE JUDGE CASE ASSIGNMENT Magistrate assigned: Thomas B. McCoun III (jlh) (Entered: 01/30/2004)
01/30/2004	2	MOTION by Sheila Olivia Davis to proceed in forma pauperis (affidavit of indigency) (jlh) (Entered: 01/30/2004)
02/04/2004	3	NOTICE of designation under Local Rule 3.05-TRACK 2. (ctc) (jlh) (Entered: 02/05/2004)
02/17/2004	4	ORDER that complaint is dismissed without prejudice; Plaintiff shall file an an amended complaint within 30 days. reset amended complaint deadline at 3/17/04 for Sheila Olivia Davis deferring [2-1] motion to proceed in forma pauperis (affidavit of indigency) (Signed by Judge Elizabeth A. Kovachevich) ctc (jlh) (Entered: 02/18/2004)
02/27/2004	5	NOTICE by Sheila Olivia Davis of change of address for pro se (ch) (Entered: 5/18/2004)

07/16/2004	6	ORDER re 4 Order, No amended

		complaint has been filed. Plaintiff shall show cause within ten days why this case should not be dismissed for failure to prosecute. Signed by Judge Elizabeth A. Kovachevich on 7/16/2004. (jm,) (Entered: 07/16/2004)
07/23/2004	7	RESPONSE TO ORDER TO SHOW CAUSE 6 by Sheila Olivia Davis. (jlh,) (Entered: 07/23/2004)
07/26/2004	8	ORDER re 7 Response to Order to Show Cause filed by Sheila Olivia Davis. Plaintiff shall file an amended complaint within ten days. If no amended complaint is filed, this case will be dismissed. Signed by Judge Elizabeth A. Kovachevich on 7/26/2004. (jm,) (Entered: 07/26/2004).
08/05/2004	9	AMENDED COMPLAINT against Polk County Sheriff's Office, filed by Sheila Olivia Davis. Related document: 1 Complaint. (jlh) (Entered: 08/05/2004)
08/06/2004	10	ORDER re 9 Amended Complaint filed by Sheila Olivia Davis, dismissing Amended Complaint with prejudice. The Clerk of Court shall close this case and terminate all pending motions. Signed by Judge Elizabeth A. Kovachevich on 8/6/2004. (jm,) (Entered: 08/06/2004)
09/22/2004	11	MOTION (letter) for status of case requesting directions. by Sheila Olivia Davis. (jlh) (Entered: 09/23/2004)
09/24/2004	12	ENDORSED ORDER re 11 MOTION for status of case requesting directions. filed by Sheila Olivia Davis, notifying Plaintiff that this case was dismissed

		with prejudice (Dkt.10). Signed by Judge Elizabeth A. Kovachevich on 09/24/2004. (jm,) (Entered: 09/24/2004)
12/27/2004	13	MOTION for reconsideration due to court's error to inform plaintiff of her right to appeal by Sheila Olivia Davis. (jlh,) (Entered: 12/27/2004)
12/28/2004	14	ORDER denying 13 Motion for reconsideration. Signed by Judge Elizabeth A. Kovachevich on 12/28/2004. (jm,) (Entered: 12/28/2004)
01/27/2005	15	NOTICE OF APPEAL as to 14 Order on motion for reconsideration by Sheila Olivia Davis. Filing fee not paid (crs) (Entered: 01/31/2005)
01/28/2005	16	MOTION for Leave to Appeal in forma pauperis by Sheila Olivia Davis. (crs) (Entered: 01/31/2005)
01/28/2005	17	TRANSMITTAL of initial appeal package to USCA consisting of certified copies of notice of appeal, docket sheet, order/judgment being appealed re: 15 Notice of appeal. Transcript information form sent. There were no hearings from which a transcript could be made. (crs) Entered: 01/31/2005)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

_____
(Enter your full name)

Plaintiff(s) Case No._____

v.

_____
(Enter full name of Defendant)

Defendant(s)

COMPLAINT

1. First Paragragh (Name and Address of Plaintiff)
2. Second Paragragh (Name and Address of Defendant)
3. This employment discrimination action is brought Pursuant to Title VII of the Civil Rights Act of 1964, as amended. Jurisdiction is specifically conferred on this court by 42U.S.C 2000e-5. Equitable and other relief is sought under 42 U.S.C 2000e5(g). **NOTE: IF YOUR ACTION IS NOT BASED ON THIS STATUTE, PLEASE CITE THE APPROPRIATE BASIS FOR YOUR ACTION. BE SURE TO MAKE OTHER NECESSARY CHANGES THROUGHOUT YOUR COMPLAINT.**
4. The acts complained of in this suit concern:
   a. Failure to employ me.
   b. Termination of my employment.
   c. Failure to promote me.
   d. Other acts as specified.

ATTACHMENT 3

5. Defendant's conduct is discriminatory with respect to the following:
   a. My race or color.
   b. My religion.
   c. My national origin.
   d. My sex.
   e. Other as specified.

NOTE: CIVIL RIGHTS ACTION CAN ALSO BE BASED ON OTHER DISCRIMINATORY PRACTICES.
IF YOUR COMPLAINT ALLEGES ANOTHER BASIS
OF DISCRIMINATION, STATE THAT BASIS AND THE APPROPRIATE STATUTE THROUGHOUT YOUR COMPLAINT.

6. The facts surrounding my claim of employment Discrimination.
7. The alleged discrimination occurred on or about (dates).
8. I filed charges with the Equal Employment Opportunity
   Commission regarding Defendant's alleged discriminatory conduct on or about (dates).
9. The Equal Employment Opportunity Commission issued a ***Notice of Right To Sue*** letter (copy attached) which was received by me on or about (dates).
10. My reasons for questioning the Commission's determination.
11. If relief is not granted, I will be irreparably denied rights secured by Title VII of the Civil Rights Act of 1964, as amended. **Note: IF THIS IS NOT THE**

STATUTORY BASIS FOR YOUR ACTION, CITE
THE APPROPRIATE STATUTE.

12. **WHEREFORE,** Plaintiff prays that:
    a. The Court appoint legal counsel pursuant to 42 U.S.C 2000e-f(f)(1)(3). **NOTE: IF THIS IS NOT THE STATUTORY BASIS FOR YOUR ACTION, CITE THE APPROPRIATE STATUTE.**
    b. The Court grant such relief as may be appropriate,
    including injunctive orders, damages, costs, and attorney's fees.

Signature
Name (Typed or Printed)
Address
Telephone No.

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

CASE NO: 05-10581-FF

SHEILA O. DAVIS

Appellant,

v.

POLK COUNTY SHERIFF'S OFFICE

Appellees.

PETITION FOR REHEARING

Appellant/Plaintiff files for petition for rehearing, in reference of court's opinion, pursuant to Federal Rules Of Appellate Procedure 40. Appellant contends that she is able to satisfy or prove the prerequisite of a timely filed charge, by enclosing the necessary documentation along with her petition for rehearing. Appellant encloses a copy of the Notice Of Suit Rights from EEOC, dated November 25, 2003, received by appellant on December 1, 2003, that doesn't state that she was untimely.

Appellant, also, encloses a copy of the findings of the local agency (Florida Commission On Human Relations) who investigated the charge. (For the record, please view page numbers of the findings of the local agency. After the first page, the top of each page reads: Page No. 2, Page No.

4, and Page No. 5. This was a typographical error on behalf of FCHR and not an exclusion of Page No. 3 on behalf of appellant.

Nevertheless, due to unawares of being pro se and trying to understand district court's attachment 3 inside of step-by-step guide, and also trying to submit documentation in a timely manner, appellant admits and apologizes for typed error(s) of amended complaint concerning who she filed charge with and the date(s). Please view copy of attachment 3 enclosed. Appellant contends that she was verbally referred by EEOC to FCHR whom she filed charge with on October 7, 1998. Appellant states that because FCHR was not in her favor, instead of requesting an appeal within thirty days back through FCHR, she decided to request a substantial weight review within 15 days through EEOC in March 2003. Also, appellees tried to get appellant's request declined. Documentation from appellee to EEOC is enclosed, for appellant was received a copy.

However, the matter should not be overlooked, due to the fact that appellant's charge was not untimely. Appellant states that Appellees brief contends that the district court's February 17, 2004 order instructed her to file, within thirty days, an amended complaint that included a statement regarding the findings of the local agency investigating the charge of discrimination. (Doc 4 p.2). However, in viewing the district court's docket sheet, (copy of district court's docket sheet is enclosed) under date filed for February 27, 2004 it reads: ORDER dated 2/17/04 addressed to Sheila Davis returned – attempted, not known (jlh)(Entered: 03/01/2004). Appellant contends that she couldn't respond to an order that she never received. This is not the appellant's

fault. Appellant contends that from April 2001, until April 1, 2004, she was at her previous address of: 2458 Chestnut Woods Drive., Lakeland, FL 33815. Therefore, appellant states that she would have received the district court's order and responded as soon as possible, had there had been an order mailed to her. Appellant states that her conclusion is that the district claims to have mailed order (Doc 4 or Dkt. 4) but never did or either the mailman may have incorrectly delivered to another address and someone at the other address may have marked unknown and returned to sender who will be the

district court. Appellant contends that she didn't move to her current address of: 929 Gilmore Ave. Apt. 80 Lakeland, FL 33801, until April 1, 2004 with an address notification requesting the post office to forward all of her mail to her above current address. Once Appellant became established, she directly notified the district court of her above current address, also. Appellant states that after she filed complaint and affidavit of indigency with district court on January 30, 2004, the first order she received from the district court was dated July 16, 2004 for order to show why case shouldn't be dismissed for failure to prosecute, in reference of Dkt. 4, that appellant/plaintiff never received. Also, in viewing the district court docket sheet under date filed February 17, 2004 – ORDER that complaint is dismissed without prejudice; It only states that Plaintiff shall file an amended complaint within 30 days, and not that plaintiff should also send in the findings of the local agency that investigated her charge. Appellant/Plaintiff contends that she filed a timely charge, and encloses satisfactory proof. Nevertheless, appellant petitions to be reheard and requests that petition is granted. November 9, 2005

Enclosures 11

Respectfully Submitted,

s/ Ms. Sheila O. Davis
Ms. Sheila O. Davis, Pro Se
929 Gilmore Ave. Apt. 80
Lakeland, FL 33801
(863) 738-2367

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

CASE NO: 05-10581-FF

SHEILA O. DAVIS

Appellant,

v.

POLK COUNTY SHERIFF'S OFFICE

Appellees.

CERTIFICATE OF SERVICE

I, Sheila O. Davis, hereby certify that a true and correct copy of the foregoing Petition For Rehearing, enclosures (11), along with the opinion of the 11th circuit has been sent by U.S. mail to the party above c/o party below on this 9th day of November, 2005.

Polk County Sheriff's Office
c/o Michael D. Malfitano, Esq.
Constangy, Brooks & Smith, LLC
100 West Kennedy Boulevard, Suite 500
P.O. Box 1840
Tampa, FL 33601-1840
(813) 223-7166

s/ Sheila O. Davis
Sheila O. Davis